Supreme Court, U.S.
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No. 94-2110

In the
Supreme Court of the United States
October Term, 1994

MARION HOMMERDING,
Petitioner,

v.

THE TRAVELERS INSURANCE COMPANY,
a Connecticut Corporation,
Respondent,

RIDGEWAY ENTERPRISES, INC.,
a South Dakota Corporation,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE UNITED STATES

RESPONDENT RIDGEWAY ENTERPRISES, INC.'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Minn. Stat. § 500.24 ("Corporate Use of Agricultural Lands" statute), restricts opportunities for corporate ownership of agricultural land in Minnesota, delegates enforcement powers to the State's Attorney General and penalizes violators with mandated divestiture of the property within five years.

The questions presented are:

I. Whether Minn. Stat. § 500.24, which does not explicitly create a private cause of action, should be construed, under Minnesota law, so as to implicitly create such a cause of action.

II. Whether Minn. Stat. § 500.24's corporate filing requirements create a duty owed by Respondent Ridgeway Enterprises, Inc., the purchaser of the farm real estate, to Petitioner Hommerding, the farm real estate's former owner.

III. Whether a sale of farm real estate can be declared null and void due to an alleged violation of Minn. Stat. § 500.24.

LIST OF PARTIES

The list of all parties to the proceeding in the court whose judgment Petitioner seeks to have reviewed include:

I. Respondent Ridgeway Enterprises, Inc., a South Dakota corporation. There is no parent or subsidiary company.
II. Respondent The Travelers Insurance Company.
III. Petitioner Marion Hommerding.

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STATEMENT OF THE CASE

This action arises out of two loans made by Respondent The Travelers Insurance Company (Travelers) to Petitioner Marion Hommerding (Petitioner) which were secured by certain farm real estate. Upon Petitioner's default, Travelers foreclosed on the farm mortgages. In February 1988, Travelers notified Petitioner of the proposed sale of the property and gave her a right of first refusal pursuant to Minn. Stat. § 500.24, subd. 6. Petitioner failed to exercise the right and the farm real estate was subsequently sold to Respondent Ridgeway Enterprises, Inc. (Ridgeway). Petitioner brought this lawsuit against Travelers and Ridgeway arising out of the sale of the farm real estate to Ridgeway.

In her complaint, Petitioner alleged that the farm real estate in question was sold to Ridgeway by Travelers in violation of Minn. Stat. § 500.24, subd. 2(d)(6). Petitioner sought to have the sale declared void due to the alleged violation of this statute. Petitioner also alleged in a count entitled "Negligence, Direct and Proximate Damages" that Travelers and Ridgeway "had a duty to meet the obligations imposed on each defendant by law." The count further alleged that this asserted duty was breached by Travelers and Ridgeway and the breaches of duty harmed Petitioner financially.

Based on the allegations of Petitioner's complaint, both Ridgeway and Travelers sought dismissal pursuant to Minn. R. Civ. P. 12.02 (failure to state a claim upon which relief can be granted). Because Petitioner, in response, brought in matters outside the pleadings, Travelers and Ridgeway's motions to dismiss were treated by the trial court in accord with Rule 12.02 as motions for summary judgment.

The trial court granted Travelers and Ridgeway's motions to dismiss based on the summary judgment standard, separately addressing each count of Petitioner's complaint. The Minnesota Court of Appeals affirmed. The Minnesota Supreme Court denied Petitioner's Petition for Further Review.

The district court and the Minnesota Court of Appeals' decisions are based on an application and interpretation of Minn. Stat. § 500.24. The courts held that Petitioner's complaint failed to state a cause of action and that Petitioner lacked standing to enforce Minn. Stat. § 500.24.

The courts concluded the language of Minn. Stat. § 500.24 reveals that the Minnesota Legislature considered who would have the power of enforcement and the Legislature expressly granted enforcement power for the statute's violation to the State's Attorney General alone. Since the statute shows no intent to provide a private right of action, none can be granted by the court. The Minnesota Court of Appeals concluded that although family farmers derive some benefit from the statute's protection of family farms, the benefit is indirect. The benefits serve the state's overall interests and Petitioner does not belong to a specially protected class.

Further, the remedy which Petitioner seeks under the statute -- to void the transfer of the farm to Ridgeway -- is unavailable under the statute. There is no such private remedy created for a violation of § 500.24. The statute penalizes violators by requiring mandatory divestiture of that property within five years. Minn. Stat. § 500.24, subd. 5.

With regard to Petitioner's assertion that Travelers and Ridgeway's violation of § 500.24 constitutes negligence per se, the statute provides for a redemption period in which rights of first refusal must be exercised. Minn. Stat. § 500.24, subd.6.

The only duty Travelers owed Petitioner was to offer her a right of first refusal. Since Travelers offered Petitioner this right pursuant to the statute and Petitioner failed to properly exercise it, this cannot be a case of negligence per se.

With regard to Ridgeway, Ridgeway cannot be negligent per se because the statute's requirement of filing reports did not create a duty owed by Ridgeway to Petitioner. Ridgeway owes Petitioner no common law or statutory duty.

REASONS FOR DENYING THE WRIT

This case concerns solely the application and interpretation of Minn. Stat. § 500.24. This case does not involve, in any respect, a question of federal law. On that basis, the writ should be denied.

Petitioner's assertion in her petition for certiorari that her constitutional rights to due process have been ignored was never raised as an issue before the Minnesota state courts and should be deemed waived. Petitioner has not and does not assert that Minn. Stat. § 500.24 itself is somehow repugnant to the United States Constitution. In her petition, Petitioner does not assert that the alleged constitutional due process violation is a violation of the United States Constitution.

In any event, Petitioner's newly asserted constitutional argument is meritless. Ridgeway sought dismissal of this case pursuant to Minn. R. Civ. P. 12 -- the equivalent of Fed. R. Civ. P. 12. Because Petitioner in response brought in matters outside the pleadings, the motion to dismiss was treated by the trial court as a motion for summary judgment and that standard of review was applied. In Minnesota, the standard of review for summary judgment is the equivalent of that applied by the federal courts, which requires the court to view the

facts most favorable to the nonmoving party. This standard of review was followed. There is no basis for Petitioner's assertion that her due process rights were violated.

CONCLUSION

Respondent Ridgeway Enterprises, Inc. respectfully requests that Petitioner Hommerding's Petition for a Writ of Certiorari be denied.

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